vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5716 OF 2001

1. The Transport Manager
Pune Municipal Transport
Swargate, Pune-37

2. The Pune Municipal Transport
Swargate, Pune - 37 ... Petitioners

V/s.

Shreepad Ananda Mahashabde
1-39, Police Colony, Swargate,
Pune - 42 ... Respondent

Mr.R.G. Ketkar for Petitioners
Mr.K.S. Bapat for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 25, 2005**

ORAL JUDGMENT:

. The Petition challenges the order of the Industrial Court passed in a complaint filed under Items 3, 5, 9 and 10 of Schedule IV of the MRTU & PULP Act. The facts giving rise to the present petition are as follows:

2. The Respondent was appointed as a Sanitary Inspector w.e.f. 2.7.1990 and was confirmed in service after one year. It appears that the Respondent had committed certain acts of misconduct for which he was

chargesheeted on 18.7.1994. He was suspended pending an enquiry. However, within a month of his suspension, the suspension order was revoked and the respondent was allowed to resume duty. He continued to work as a sanitary inspector and was transferred to Kothrud depot as a Junior Grade Clerk with effect from 1.12.1995. On 1.12.1995 after the respondent's transfer to Kothrud depot, the post of sanitory inspector was filled temporarily for three months by one S.D. Bankar. He was continued from time to time thereafter by giving him two or three days break in service. The Personnel Manager sought approval for appointment of the respondent as a junior grade clerk on permanent basis pursuant to his transfer. On 16.12.1996, the Transport Manager approved the appointment of the Respondent as a Junior Grade Clerk. Pursuant to the approval, the respondent was appointed as a junior grade clerk on and from 6.11.1996 and a notice was issued to the respondent on 5.11.1996. In the meantime, the Petitioners advertised for the post of sanitary inspector and eight applications were received for the same. The Petitioners appointed one of the persons after selecting him in accordance with the Rules. On 28.4.1997, the respondent filed complaint (ULP) No.154 of 1997 alleging unfair labour practices under Items 3, 5, 9 and 10 of Schedule IV of the MRTU & PULP Act. The Petitioners

filed their written statement contending that the transfer was not malafide and that they have acted in accordance with their Rules. The transfer was effected according to the Petitioners on account of exigencies of work as well as the fact that it was not appropriate to continue the respondent in the post of sanitary inspector especially when he had been punished for several acts of misconduct committed by him when was employed as a sanitary inspector. Oral as well as documentary evidence was led. The Petitioners pointed out that the advertisement seeking applications for the post of sanitary inspector was issued only after the respondent's transfer; the advertisement was dated 5.12.1996 and not 5.11.1996 as alleged by the respondent.

3. The Industrial Court by its impugned judgment dated 11.10.2001 has allowed the complaint and set aside the order of the Tribunal. The Industrial Court was of the view that the transfer effected was malafide in view of the fact that the advertisement had been issued seeking applications to the post of sanitary inspector prior to transferring the respondent to the post of Junior Grade Clerk. According to the Industrial Court, the advertisement was issued on 5.11.1996 whereas the Petitioner's transfer order was dated 6.11.1996, thereby

indicating that the transfer was not on account of exigencies of work but was motivated and malafide. The Industrial Court was of the view that clause 28 of the certified standing orders annexed to the Petition did not permit the Petitioners to transfer a sanitary inspector to the post of Lower Division Clerk. The post of sanitary inspector was a solitary post and that being so, the respondent would not have to contend with the others who may be junior to him. According to the Industrial Court, transferring the respondent to the post of junior grade clerk for which there were already 182 sanctioned posts affected the respondent prejudicially. The Industrial Court has taken the view that the duties of the sanitary inspector and junior grade clerk would differ. The qualifications required for the two posts were different. A sanitary inspector required the qualification of a Diploma in the field of sanitation, which was not required for appointment of a Lower Grade clerk. In such circumstances, the Industrial Court held that the transfer was malafide and that the respondent’s service conditions had been adversely affected. The Industrial Court was of the view that the transfer was contrary to clause 38 of the standing orders.

4. Mr.Ketkar, appearing for the Petitioners,

submits that the Industrial Court has erroneously concluded that the transfer was malafide. He submits that a bare perusal of the order of the transfer would indicate that it was on account of exigencies of work. He submits that under clause 38 of the certified standing orders, an employee could be transferred from one place to any other place within the limits of the Municipal Corporation of the City of Pune and from one department of the Undertaking to the other department, so long as the terms and conditions of service were not affected. He urges that the Petitioners can always transfer the employees from one post to another irrespective of whether an employee was initially engaged for doing a particular type of work so long as the service conditions are not adversely affected. According to the learned Advocate, the transfer of the Respondent from the post of sanitary inspector to the post of lower grade clerk has been effected in consonance with the standing order 38 of the Certified Standing Orders and therefore, the Industrial Court ought not to have interfered with such a transfer. He submits that the payscale of the respondent has remained the same even after the transfer. All other service conditions have remained the same. Only the nature of work has changed. Furthermore, the learned Advocate submits that the Industrial Court has committed a grave

error in holding that the transfer was malafide. He submits that the advertisement was issued by them on 5.12.1996 and not on 5.11.1996. According to him, it was only after the transport manager had signed the notice for issuance of the advertisement on 4.12.1996 that the same could have been issued. Therefore, it is obvious that there is a typographical error and the advertisement had been issued only after the transport manager had signed the same. He further emphasises the point that there is no bar to transfer the sanitary inspector to the post of lower division clerk as there is no reduction in his status. Both the posts were in the same payscale and the respondent is not adversely affected in any manner. The learned advocate urges that the Respondent would in fact benefit by being appointed as a Junior Grade Clerk as there exists a channel of promotion through which he would rise in the hierarchy of the employees maintained by the Petitioners. The respondent has no right to continue in the post of sanitary inspector, till his retirement. It was always open for the Petitioner undertaking to consider whether it was appropriate to continue him in that post.

5. Per contra, the learned Advocate for the Respondent submits that the writ petition should be dismissed as the Industrial Court on a consideration of

the facts and evidence before it has held that the transfer was motivated. This is a finding of fact according to the learned Advocate which need not be disturbed in this petition filed under Article 226 of the Constitution of India. He submits that the Petitioners have at every stage given various reasons for his transfer; at one stage, in the transfer order dated 26.11.1996 it has been stated that it is on account of exigencies of work that the transfer has been effected. However, submits the learned Advocate, in the written statement, the Petitioner has stated that the transfer was required to be effected for administrative convenience. According to the learned Advocate, in fact the transfer was motivated and was not on account of any exigencies of work. He further submits that the service conditions of the respondent had been changed as certain allowances which the Respondent was entitled to as sanitary inspector, will not be paid to him after his appointment as lower division clerk. This itself according to the learned Advocate shows that the transfer is malafide and not in accordance with standing order 38 of the certified standing orders. He, therefore, submits that the Industrial Court has rightly allowed the complaint and set aside the order of transfer.

6. The Industrial Court in my view, has committed an error in allowing the complaint. The respondent was issued a chargesheet on 18.7.1994 for certain acts of misconduct. An enquiry was held and he was punished by withholding certain increments. Thereafter, on 31.1.1995, the respondent was transferred temporarily to the Kothrud depot on account of the acts of misconduct that he has committed as a sanitary inspector. This temporary appointment in the Kothrud depot continued till the transfer order issued to him on 6.11.1996 transferring him to the post of lower division clerk. The Industrial Court was not right in observing that this transfer was malafide. There can be no doubt that the notice of the advertisement for the post of Sanitory Inspector was signed by the transport manager only on 4.12.1996. Therefore, advertisement could have been issued only thereafter. The Industrial Court was in error in observing that the advertisement had been issued on 5.11.1996. Apart from this, the Industrial Court ought to have considered the fact that the Petitioner had transferred the respondent to the post of junior grade clerk after ensuring that the payscale payable to the petitioner on the transferred post would be the same as that payable for the post of sanitary inspector. The submission of the learned Advocate for the respondent that certain allowances which the

Respondent was entitled to would not be available to him cannot be accepted. The allowances were payable according to the nature of the work that was expected of a Sanitory Inspector. The allowances to which the respondent was entitled to are petrol allowances and reimbursement of telephone expenses. These allowances were given to the respondent only after he became a sanitary inspector and from the year 1999. The administrative officer of the Pune Municipal Transport who was examined on 28.2.2001 has stated that the sanitary inspector was entitled to scooter allowance and telephone bills and that these allowances were being paid to the sanitary inspector since the past two years. Therefore, the allowances were available only from 1999 and not earlier as contended by the respondent. Undisputedly the payscale has remained the same.

7. The only question now is whether the work of a lower division clerk is inferior to the work of a sanitary inspector and if so, whether such a transfer would be malafide. According to the learned Advocate for the respondent, a sanitary inspector possesses higher qualifications than a junior grade clerk and therefore, it is obvious that by transferring the respondent to that post the Petitioners have violated the standing order 38. He submits that the

qualifications required by the sanitary inspector's post include a diploma in sanitation which is not necessary for the post of lower division clerk and therefore, he states that the respondent's status has been adversely affected. In my view, this submission cannot be accepted. The post of a sanitary inspector is a post which requires certain technical qualifications. That, however, would not necessarily lead to the inference that the post of lower division clerk was inferior. Both the posts are placed in the same payscale and therefore, the transfer effected cannot be questioned. Both the sanitary inspector and the junior grade clerk are entitled to the payscale of Rs.950-25-2405. Merely because the respondent would have to contend with others who are senior to him in the post of junior grade clerk would not necessarily imply that the transfer was bad. There is evidence on record to indicate that the respondent was to be fitted in accordance with his seniority from his date of joining the service and therefore, it would not prejudice him in any manner by working in the post of junior grade clerk. The submission of the learned Advocate that the respondent had in fact been demoted cannot be accepted. Furthermore, a channel of promotion is available to a junior grade clerk whereas a Sanitary Inspector would stagnate in the same post. In any event there is no

evidence on record to indicate that the transfer is malafide and, therefore, Item 3 of Schedule IV is not attracted.

8. In my view, the Industrial Court has committed an error and the order must be set aside. Consequently, the Rule made absolute. No order as to costs.